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April 16, 2003

## **VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

### **Re: Notice of *Ex Parte* Meeting of Virgin Mobile USA, LLC**

*In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, CC Docket No. 92-237, NSD File No. L-00-72; Number Resource Optimization, CC Docket No. 99-200; Telephone Number Portability, CC Docket No. 95-116; Truth-in-Billing and Billing Format, CC Docket No. 98-170;*

*In the Matter of Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102; Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610-1600.6 MHz Band, IB Docket No. 99-67; and*

*In the Matter of Telephone Number Portability, CC Docket No. 95-116*

Dear Ms. Dortch:

Virgin Mobile USA, LLC ("VMU") submits this notice of an *ex parte* meeting held on April 15, 2003. The following individuals were present at the meeting: Peter Lurie, Vice President and General Counsel of VMU; Helen Disenhaus and Douglas Orvis of Swidler Berlin Shereff Friedman, LLP; and Jessica Rosenworcel, Competition and Universal Service Legal Advisor to Commissioner Copps. VMU used the attached materials in its presentation.

At the meeting, VMU explained its operations as a mobile virtual network operator ("MVNO") which offers "pay-as-you-go" wireless service at flat-rate pricing inclusive of taxes, pass-throughs,

surcharges, and extra fees (such as increments for collecting USF payments). VMU discussed its position in ongoing Commission proceedings concerning the universal service fund ("USF" or "Fund") contribution methodology, E911 obligations for non-licensees, and wireline-wireless local number portability ("LNP").

**USF:** VMU described its position that the interim USF contribution system is fair and sustainable. Should the Commission favor adopting a connection-based system, however, VMU urged the Commission to modify the definition of prepaid connection and to reduce the per-connection charge for wireless subscribers in order to make the system fair to low-volume consumers and consistent with Section 254 of the Act.

VMU urged the Commission to revise the proposed definition of prepaid connections under the connection-based and numbers-based systems to connections that were actually used for interstate services during the preceding month. Without this modification, low-volume, intrastate users would unfairly subsidize the USF contributions of heavy interstate users. Further, the proposed definition must be changed to avoid jeopardizing carriers' ability to offer one-rate pricing, and to keep from making wireless service cost-prohibitive to low-volume or less affluent users.

VMU stated that preferential treatment of interexchange carriers under various connection-based system proposals harms the sustainability of the Fund and further disadvantages low-volume consumers, especially wireless customers. Based on wireless industry averages and percentages of interstate use from other industry sectors, an equitable per-connection charge for wireless is \$0.30. This figure is revenue-neutral to the Fund when interexchange carriers pay their fair share.

If the connection-based methodology cannot be made equitable by incorporating these changes, the interim contribution system should be made permanent. Basing contributions on interstate revenues is fair to all industry sectors and to consumers, and recent changes to the interim system improve the sustainability of the Fund.

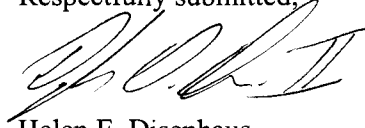
**E911:** VMU expressed its position that resellers should be required to provide Phase II E911 service on a schedule similar to that applicable to Tier III carriers. VMU also urged the Commission to evaluate licensee and non-licensee E911 compliance separately, with each service provider being responsible for its own compliance.

**LNP:** VMU expressed support for CTIA's petition concerning wireline-wireless LNP obligations and requested that the Commission rule quickly to avoid further delay to the November 24, 2003 deadline. VMU also urged the Commission to resolve its ongoing proceeding concerning bona fide requests ("BFRs") and to clarify that BFRs are not a prerequisite for wireless-wireless LNP implementation.

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If you have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H. Disenhaus", written over a horizontal line.

Helen E. Disenhaus  
Douglas D. Orvis II

Counsel for Virgin Mobile USA, LLC

Enclosure

# **Federal Communications Commission**

## **APRIL 2003**



# **AGENDA**

- 1. Introduction to Virgin Mobile USA**
- 2. VMU's Value Proposition**
- 3. VMU's Regulatory Positions**
  - a) USF**
  - b) E-911**
  - c) LNP**

# Introduction to VMU

- **First MVNO in the United States.**
  - **Joint Venture between the Virgin Group and Sprint.**
  - **Focused on youth market.**
- **500,000 subscribers in first 9 months of operations.**
- **VMU's customers are satisfied, engaged, and loyal.**
  - **93% overall satisfaction.**
  - **53% of consumers utilize text messaging.**
  - **92% would recommend VMU to a friend.**
  - **Current customer base skews towards 16-24 year-olds, female, and Hispanic/African American.**

# **VMU's Value Proposition**

- **Emphasis on simplicity, flexibility and ease of use.**
- **No contracts or minimum monthly amounts; no bills.**
- **90-day expiration for purchased minutes, with 60-day grace period.**
- **All-Inclusive Pricing: no pass-through of USF, E-911 surcharges, or taxes; total cost quoted in price per minute; no peak/off-peak distinctions.**
- **Full suite of novel and targeted data applications directed at the youth market.**
- **Best customer service in the industry.**

# VMU's Regulatory Positions

- **USF**
  - **Equitable wireless contribution levels.**
    - **Revise prepaid wireless "Connection" definition and make fee fair, or**
    - **Continue revenue-based contribution.**
- **E911**
  - **Voluntary compliance; scheduled commitments exceed most Tier III carrier benchmarks.**
  - **Tier III model is reasonable for non-licensees.**
  - **Evaluate licensee and non-licensee compliance separately.**
- **LNP**
  - **Support Wireless-Wireless LNP.**
  - **Support Wireline-Wireless LNP, but requiring "presence" too expensive and infeasible.**
  - **Oppose further delay to 11/24/03 implementation.**
  - **No need for BFRs.**



# Make USF Fair to Wireless Consumers

- **Don't start from premise of IXC favoritism.**
  - **IXCs generate the majority of interstate revenues.**
  - **Primary IXC issues already remedied.**
    - **Wireless Safe Harbor reduced.**
    - **Contribution now based on projected, collected revenue.**
  - **Carriers can distinguish interstate and intrastate revenue, even with bundling of services.**
  - **Special treatment of IXCs harms the sustainability of the Fund and harms low-usage customers, especially wireless customers.**
  - **May deter low usage consumers, who tend to have intrastate-only and emergency-only wireless usage because USF contribution based on number of handsets (or numbers), not interstate spending.**

# Make USF Contribution Fair to Wireless Consumers

- **Modify definition of a prepaid connection for connection-based and number-based systems.**
  - *Unless the prepaid user definition is revised, low-volume, intrastate users unfairly subsidize USF contribution of heavy interstate users.*
  - *User (connection) definition for prepaid wireless therefore must be limited to actual interstate users during preceding month.*
  - Even with revised definition, a low-usage consumer would pay significantly more in USF payments on a per minute basis; without a revised definition, the consumer would pay even without any interstate traffic.
  - The proposals could require 3 USF payments (representing 15% of card revenues) for a \$20 card used for only intrastate calls over 3 months (without any additional revenues to VMU).
  - Proposed connection-based USF systems jeopardize “one rate” pricing and may make service cost-prohibitive for young users.

# Wireless Is Different

- It is appropriate to treat wireless and wireline phones differently because the services are different.
  - Wireless and wireline phones differ in terms of their percentages of interstate access.
  - Wireless service, like high-cap line service, has shared network elements, yet no discount offered to wireless.
  - Wireless “Connection” is intermittent, not dedicated.
- Wireless users pay for *mobility, not connections*, and low-volume users need mobility too.

# **Fair “Connection” or “Number” Charge for Wireless is \$0.30**

- **Approximates percentages of total interstate revenue contributed by other sectors (based on wireless industry averages).**
- **Feasible and revenue-neutral when IXC contribute fair share.**
  - **Even a minor increase in the IXC percentage contribution makes this wireless contribution reduction revenue neutral.**
  - **Revenue increased if IXCs contribute at 2% level like wireless.**
- **Reflects Intermittent Nature of Connection and Sharing of Network Elements.**

# **If “Equitable Contribution” Connection Charge is Not Implemented, Then Make Interim Revenue-System Permanent**

- **Interim revenue-based systems ensures all sectors pay their fair shares.**
- **Assesses all interstate carriers and doesn’t assess intrastate revenues.**
- **Doesn’t force emergency-only or low-volume intrastate mobile users to subsidize other users.**
- **Simplifies carrier contribution and budgeting.**
- **Allows near-term adjustment for fund short-falls.**
- **Allows consumers and policy-makers to determine the impact of USF.**
- **Industry trend toward bundling does not make it difficult to separate interstate and intrastate revenues.**

# **VMU's Proposed E911 Schedule Tracks Tier III Plan**

- **Tier III implementation schedule can serve as a model for non-licensee compliance.**
- **VMU's voluntary implementation schedule**
  - **9/23/2003: Begin selling and activating A-GPS-enabled handsets**
  - **9/30/2003: 25% of new handsets A-GPS-enabled**
  - **12/31/2003: 50% of new handsets A-GPS-enabled**
  - **9/30/2004: 100% of new handsets A-GPS-enabled**
  - **12/31/2005: 95% of all subscriber handsets in service A-GPS-enabled.**
- **VMU schedule achieves 25% benchmark two months earlier than Tier III carriers, 50% benchmark five months earlier than Tier III carriers.**
- **VMU's schedule is reasonable and in the public interest.**

# **Consider Licensee and Non-Licensee E911 Compliance Separately**

- **Unfair to tie compliance of a non-licensee to that of its underlying licensee.**
  - **Non-licensees are competitors of underlying licensees.**
  - **Should not give underlying licensee undue control of non-licensee operations and business model to ensure compliance.**
- **Solution is to evaluate licensee and non-licensee compliance separately, based solely on their respective applicable deadlines and their respective direct end-user sales.**
- **Non-licensees are in best position to monitor their own compliance.**

# **VMU Supports All Forms of Wireless LNP and CTIA Petition**

- **Wireless-Wireless LNP is a natural extension of VMU's consumer-friendly philosophy.**
- **CTIA's petition for wireline-wireless LNP raises policy, not technical, issue.**
- **VMU supports CTIA's petition because wireline-wireless LNP is essential for true intermodal competition.**
- **Consequences of denying CTIA Petition are severe.**
  - **Wireless carriers must obtain NXX's or "presence" in all rate centers, causing number exhaustion; or**
  - **Wireline-wireless LNP will be unavailable to nearly 90% of consumers due to lack of "presence."**
- **Prompt action on CTIA's petition is critical to avoid further delay to long-awaited 11/24/03 implementation.**



# **FCC Should Clarify That BFRs Not Needed for Wireless LNP**

- **Bona fide request (BFR) issue remains outstanding, even though deadline for submitting BFRs has passed.**
- **BFR process is extremely burdensome and unnecessary, representing potential loophole to LNP implementation, when carriers have long been aware of deadline.**
- **BFR process is exclusionary because VMU, as a reseller, is not eligible under Section 52.31 to submit BFRs.**
  - **VMU can request list of switches for which licensees have requested LNP; however, that process is burdensome, and carriers are not compelled to respond.**
- **FCC should state that BFRs are not needed to obtain wireless LNP on 11/24/2003 in the top 100 MSAs, providing needed clarity on this issue and avoiding further waste of carrier resources.**

# CONTACTS

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